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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/800,572

03/15/2004

Brian J. Brown

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EXAMINER

BUI, VY Q

ART UNIT

PAPER NUMBER

3773

MAIL DATE

DELIVERY MODE

09/27/2010

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/800,572	Applicant(s) BROWN ET AL.	
	Examiner Vy Q. Bui	Art Unit 3773	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 27 August 2010.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 38-41 and 43-52 is/are pending in the application.
- 4a) Of the above claim(s) 41 and 43 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 38-40, 44-52 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>7/6/2010; 8/27/2010</u> . | 6) <input type="checkbox"/> Other: _____ |

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DETAILED ACTION

Response to Arguments

Applicant's arguments, see paper 12/16/2009, filed 12/16/2009, with respect to the "Final Rejection" (paper 7/23/09) have been fully considered and are persuasive because "Gianturco-5,282,824" does not explicitly disclose element 20 as a circumferential connecting strut, which is able sustain a compression force. The finality of the office action (7/23/2009) has been withdrawn.

However, upon further consideration, a new ground(s) of rejection is made in view of Moriuchi et al-5,879,381.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 45 rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 45 recites the limitation "the circumferential connecting struts" in line 10. There is insufficient antecedent basis for this limitation in the claim.

Claim Rejections - 35 USC § 102

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

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Claims 45 is rejected under 35 U.S.C. 102(e) as being anticipated by Moriuchi et al.-5,879,381 (Moriuchi).

As to claim 45, Moriuchi (F 12, for example) shows closed circumferential support structures having apex portions longitudinally overlapped each other, circumferential connecting struts 59a, 59b extending in two opposite directions and between two apex portions substantially as recited in the claims. Moriuchi's stent 50 (F 12, for example) comprises / defines two type of cells: type-A cells, such as cells 57a, 57b, 57c, 57d (F 12), wherein each type-A cell does not have a connecting strut as a portion of the cell; and type-B cells, wherein each of type-B cells has a connecting strut as a portion of the cell. The claim only **requires** type-B cells, but does not **exclude** type-A cells because the term "**defining**" (claim 45, line 2) is interpreted as "**comprising**" (in contrast with "**consisting of**"). Notice that circumferential connecting struts 59a, 59d are wider than at least some of the longitudinal struts defining apex portions (please see F 7, 8, 9, and 12).

Claim Rejections - 35 USC § 103

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

1. Claims 38-39, 44, 46-47, 49-52, are rejected under 35 U.S.C. 103(a) as being unpatentable over Mathis et al.-6,129,755 (Mathis) in view of Wijay-5,824,059 (Wijay).

As to claims 38-39, 44, 46-47, 49-52, Mathis (F 1-5, for example) discloses stent 50 comprising closed circumferential support structures 52(a), 52(b), 52(c), 52(d), longitudinal struts 60, apex portions 64, connecting struts 70 connecting two adjacent circumferential support structures 52(a), 52(b), 52(c), 52(d), and directing in 1st direction and 2nd direction

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opposite the 1st direction (F 4). Mathis does not disclose some of the struts 60 longer than the others to provide apex portions 64 longitudinally overlap other intermediate apex portions, and connecting struts 70 extend in a direction perpendicular to the longitudinal axis of the stent.

However, Wijay (F 1, 5) shows that one apex portion (formed by element 34 and 46, F 5) of one support structure 14 overlapping another apex portion (formed by element 48 and 46, F 5) of support structure 12 so that connecting strut 42 / 46 can be perpendicular to the longitudinal axis of the stent, Wijay (F 4) also teaches circumferential connecting struts 42 / 46 / 94 can be perpendicular to the longitudinal struts (col. 7, lines 12-16) apparently in order to obtain the advantage of enabling the stent portions 62, 64, 66, etc. (F 4) to be closer to each other and thus providing a more continuous support to the blood vessel along the length of the stent. In view of Wijay teaching, it would have been obvious to provide some longer struts 60 for Mathis stent 50 to cause overlapping apex portions 64(a) and 64(b) of F 4A and orient the circumferential connecting struts 70 of Mathis in an orientation perpendicular to the longitudinal axis of the stent so that it too would have this advantage.

2. Claims 38-39, 44, 46-47, 49-52, are rejected under 35 U.S.C. 103(a) as being unpatentable over Mathis et al.-6,129,755 (Mathis) in view of Wijay-5,824,059 (Wijay) and further in view of Richter-7,534,257 (Richter).

Mathis and Wijay disclose substantially the claimed invention, except for a wider connecting strut 70 than a longitudinal strut 60. However, Richter discloses a stent (F 2) comprising wider connecting struts 9 and thinner connecting struts 9' for various flexibility of various sections of the stent, apparently a thinner strut for more flexibility and a wider strut for more rigidity. It would have been obvious to one of ordinary skill in the art to provide a wider connecting strut for more rigidity (predicted result) in the stent combined by Mathis and Wijay in

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view of Richter. This modification or substitution of a connecting strut 70 of Mathis for a wider connecting strut yields predictable result (more rigidity) would have been considered as obvious.

KSR Int'l Co. v. Teleflex Inc., 127 S. Ct. 1727, 1741 (2007).

In addition, it would have been an obvious matter of design choice to modify a dimension, such as a width of an element, since such a modification would have involved a mere change in the size of a component. A change in size is generally recognized as being within the level of ordinary skill in the art. In re Rose, 105 USPQ 237 (CCPA 1955).

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Vy Q. Bui whose telephone number is 571-272-4692. The examiner can normally be reached on Monday-Tuesday and Thursday-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jackie Ho can be reached on 571-272-4696. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Vy Q. Bui/
Primary Examiner, Art Unit 3773